In the High Court of Judicature at Madras

Dated:13.06.2006

Coram:

The Hon'ble Mr.Justice P.SATHASIVAM
and
The Hon'ble Mr.Justice V.DHANAPALAN

Habeas Corpus Petition No.140 of 2006

Prabha .. Petitioner

vs.

1. The State of Tamil Nadu,
   rep. by its Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai-8. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus to call for the records relating to the detention order passed by the second respondent in No.559/2005 dated 23.12.2005, quash the same and direct the respondents to produce the body of the detenu Sivaraj, son of Vadivel, now detained at Central Prison, Chennai before this Court and set him at liberty.

For petitioner : Mr.S.Doraisamy for
Mr.V.Elangovan

For respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

The petitioner, who is the wife of the detenu by name Sivaraj, who was detained as a "Bootlegger" as contemplated under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982") by the impugned order of detention dated 23.12.2005, challenges the same in this petition.

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2. Heard both sides.

3. At the foremost, the learned counsel for the petitioner by drawing our attention to the reference made in paragraph 3 of the grounds of detention viz., after destroying the remaining I.D arrack and fermented wash a "certificate" was prepared to that effect, submitted that no such certificate was prepared as per Section 32 of the Tamil Nadu Prohibition Act, 1937 and the only document available is destruction mahazar, which finds place at page 56 of the paper book supplied to the detenu. According to him, in the absence of the certificate as stated in paragraph 3 of the detention order, it is presumed that the detaining authority has not applied his mind while passing the detention order. He has also heavily relied on the decision of this Court dated 25.09.2003 in HCP No.2580 of 2002. In that case, before the Division bench, a similar contention was raised. A perusal of the details mentioned in the said decision shows that in that case also the destruction mahazar alone was prepared and a copy was supplied to the detenu. However, as in the present case, the detaining authority therein referred to the said document as a certificate prepared under Section 32 of The Tamil Nadu Prohibition Act, 1937. The Division Bench after finding that the document available in the paper book does not amount to certificate in terms of Section 32 of The Tamil Nadu Prohibition Act, 1937 and after holding that the detaining authority has not applied his mind, quashed the detention order.

4. On going through the factual details in our case, particularly the reference made in para 3 as well as the document available at page 56 of the paper book, we are of the view that the decision relied on by the learned counsel for the petitioner is directly applicable to the case on hand. Inasmuch as the detaining authority has referred the destruction mahazar as a certificate in terms of Section 32 of The Tamil Nadu Prohibition Act, 1937, we are satisfied that the detaining authority has not properly applied his mind and on that ground the impugned detention order is liable to be quashed and accordingly, the same is quashed.

5. The Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Commissioner of Police, Greater Chennai, Egmore, Chennai-8.

2. The Secretary to Government,State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-9.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ one cc to Mr.V.Elangovan,Advocate Sr.No.24216.

PLI (CO)
RSM/19.6.2006

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